

DRIVING UNDER THE INFLUENCE SENTENCING**REVISIONS**

2015 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions relating to sentencing requirements for driving under the influence violations.

Highlighted Provisions:

This bill:

- ▶ provides that an impaired driving plea is not available to a person who has certain prior convictions;
- ▶ requires the court to impose, for a felony driving under the influence violation, an order requiring the person to obtain a screening and assessment for alcohol and substance abuse and treatment as appropriate;
- ▶ requires the court to order the installation of the ignition interlock system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person if a person is convicted of a driving under the influence violation within 10 years of a prior conviction;
- ▶ provides that a person who operates a motor vehicle without an ignition interlock device as ordered by the court is in violation of driving without an ignition interlock system; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-502.5, as last amended by Laws of Utah 2010, Chapter 109

32 **41-6a-505**, as last amended by Laws of Utah 2013, Chapter 71

33 **41-6a-512**, as last amended by Laws of Utah 2008, Chapter 226

34 **41-6a-518**, as last amended by Laws of Utah 2011, Chapter 421

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **41-6a-502.5** is amended to read:

38 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**
39 **requirements.**

40 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of
41 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of
42 impaired driving under this section if:

43 (a) the defendant completes court ordered probation requirements; or

44 (b) (i) the prosecutor agrees as part of a negotiated plea; and

45 (ii) the court finds the plea to be in the interest of justice.

46 (2) A conviction entered under this section is a class B misdemeanor.

47 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of
48 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

49 (ii) If the defendant fails to appear before the court and establish successful completion
50 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an
51 amended conviction of Section 41-6a-502.

52 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of
53 conviction.

54 (b) The court may enter a conviction of impaired driving immediately under
55 Subsection (1)(b).

56 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor
57 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one
58 degree.

59 (5) (a) The court shall notify the Driver License Division of each conviction entered
60 under this section.

61 (b) Beginning on July 1, 2012, a court shall, monthly, send to the Division of
62 Occupational and Professional Licensing, created in Section 58-1-103, a report containing the

name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving while impaired, in whole or in part, by a prescribed controlled substance.

(6) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a sentencing court to order a convicted person to participate in a screening, an assessment, or an educational series, or obtain substance abuse treatment or do a combination of those things, apply to a conviction entered under this section.

(b) The court shall render the same order regarding screening, assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under this section as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsection 41-6a-505(1), (2), or (3).

(7) (a) Except as provided in Subsection (7)(b), a report authorized by Section 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court.

(b) The provisions of Subsection (7)(a) do not apply to a report concerning:

(i) a CDL license holder; or

(ii) a violation that occurred in a commercial motor vehicle.

(8) The provisions of this section are not available to a person who has a prior conviction as that term is defined in Section 41-6a-501(2).

Section 2. Section **41-6a-505** is amended to read:

41-6a-505. Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations.

(1) As part of any sentence for a first conviction of Section 41-6a-502:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 48 consecutive hours;

(B) require the person to work in a compensatory-service work program for not less than 48 hours; or

(C) require the person to participate in home confinement of not fewer than 48 consecutive hours through the use of electronic monitoring in accordance with Section

41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (1)(b);

(v) impose a fine of not less than \$700; and

(vi) order probation for the person in accordance with Section 41-6a-507, if there is admissible evidence that the person had a blood alcohol level of .16 or higher; and

(b) the court may:

(i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate; or

(ii) order probation for the person in accordance with Section 41-6a-507.

(2) If a person is convicted under Section 41-6a-502 within 10 years of a prior conviction as defined in Subsection 41-6a-501(2):

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 consecutive hours;

(B) require the person to work in a compensatory-service work program for not less than 240 hours; or

(C) require the person to participate in home confinement of not fewer than 240 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (2)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (2)(b);

(v) impose a fine of not less than \$800; and

(vi) order probation for the person in accordance with Section 41-6a-507; and

(b) the court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation:

(a) the court shall impose:

(i) a fine of not less than \$1,500;

(ii) a jail sentence of not less than 1,500 hours; and

(iii) supervised probation; and

~~[(iv) an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours; and]~~

(b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in home confinement of not fewer than 1,500 hours through the use of electronic monitoring in accordance with Section 41-6a-506.

(4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court shall impose an order requiring the person to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate.

~~[(4)]~~ (5) (a) The requirements of Subsections (1)(a), (2)(a), ~~[and]~~ (3)(a), and (4) may not be suspended.

(b) Probation or parole resulting from a conviction for a violation under this section may not be terminated.

~~[(5)]~~ (6) If a person is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:

(a) treatment as described under Subsection (1)(b), (2)(b), or ~~[(3)(a)(iv)]~~ (4); and

(b) one or more of the following:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6a-518;

(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the person; or

(iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.

Section 3. Section **41-6a-512** is amended to read:

41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.

(1) (a) The prosecution shall state for the record a factual basis for a plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation when the prosecution agrees to a plea of guilty or no contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an original charge of a violation of Section 41-6a-502 for an offense committed before July 1, 2008:

(i) reckless driving under Section 41-6a-528; or

(ii) an ordinance enacted under Section 41-6a-510.

(b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(2) The court shall advise the defendant before accepting the plea offered under this section of the consequences of a violation of Section 41-6a-528.

(3) The court shall notify the Driver License Division of each conviction of Section 41-6a-528 entered under this section.

(4) (a) The provisions in Subsections 41-6a-505(1), (2), and ~~[(3)]~~ (4) that require a sentencing court to order a convicted person to participate in a screening, an assessment, or an educational series or obtain substance abuse treatment or do a combination of those things, apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

(b) The court shall render the same order regarding screening, assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections 41-6a-505(1), (2), and ~~[(3)]~~ (4).

Section 4. Section **41-6a-518** is amended to read:

41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost -- Impecuniosity -- Fee.

(1) As used in this section:

(a) "Commissioner" means the commissioner of the Department of Public Safety.

(b) "Ignition interlock system" or "system" means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started or continuously operated without first determining the driver's breath alcohol concentration.

(c) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation who contracts with the court in accordance with Subsections 41-6a-507(2) and (3).

(2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and 41-6a-505, and in addition to any requirements imposed as a condition of probation, the court may require that any person who is convicted of violating Section 41-6a-502 and who is granted probation may not operate a motor vehicle during the period of probation unless that motor vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated so that the motor vehicle will not start or continuously operate if the operator's blood alcohol concentration exceeds a level ordered by the court.

(b) If a person convicted of violating Section 41-6a-502 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6a-502 within ten years of a prior conviction as defined in Subsection 41-6a-501(2), the court shall order the installation of the interlock ignition system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person.

(ii) A person who operates a motor vehicle without an ignition interlock device as required under this Subsection (2)(c) is in violation of Section 41-6a-518.2.

~~[(c)]~~ (d) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

~~[(d)]~~ (e) This section does not apply to a person convicted of a violation of Section 41-6a-502 whose violation involves drugs other than alcohol.

(3) If the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or

218 operated by the probationer, at the probationer's expense;

219 (c) immediately notify the Driver License Division and the person's probation provider

220 of the order; and

221 (d) require the probationer to provide proof of compliance with the court's order to the

222 probation provider within 30 days of the order.

223 (4) (a) The probationer shall provide timely proof of installation within 30 days of an

224 order imposing the use of a system or show cause why the order was not complied with to the

225 court or to the probationer's probation provider.

226 (b) The probation provider shall notify the court of failure to comply under Subsection

227 (4)(a).

228 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification

229 under Subsection (4)(b), the court shall order the Driver License Division to suspend the

230 probationer's driving privileges for the remaining period during which the compliance was

231 imposed.

232 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable

233 to excuse the probationer's failure to comply with the court's order.

234 (5) (a) Any probationer required to install an ignition interlock system shall have the

235 system monitored by the manufacturer or dealer of the system for proper use and accuracy at

236 least semiannually and more frequently as the court may order.

237 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the

238 court or the person's probation provider.

239 (ii) The report shall be issued within 14 days following each monitoring.

240 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the

241 reasonable costs of leasing or buying and installing and maintaining the system.

242 (b) A probationer may not be excluded from this section for inability to pay the costs,

243 unless:

244 (i) the probationer files an affidavit of impecuniosity; and

245 (ii) the court enters a finding that the probationer is impecunious.

246 (c) In lieu of waiver of the entire amount of the cost, the court may direct the

247 probationer to make partial or installment payments of costs when appropriate.

248 (d) The ignition interlock provider shall cover the costs of waivers by the court under

249 this Subsection (6).

250 (7) (a) If a probationer is required in the course and scope of employment to operate a
251 motor vehicle owned by the probationer's employer, the probationer may operate that motor
252 vehicle without installation of an ignition interlock system only if:

253 (i) the motor vehicle is used in the course and scope of employment;

254 (ii) the employer has been notified that the employee is restricted; and

255 (iii) the employee has proof of the notification in the employee's possession while
256 operating the employer's motor vehicle.

257 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
258 probationer subject to this section for personal use, no exemption under this section shall apply.

259 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
260 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
261 system shall notify the employer and obtain consent in writing from the employer to install a
262 system in the employer-owned motor vehicle.

263 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
264 by a probationer subject to this section is not a motor vehicle owned by the employer and does
265 not qualify for an exemption under this Subsection (7).

266 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
267 the commissioner shall make rules setting standards for the certification of ignition interlock
268 systems.

269 (b) The standards under Subsection (8)(a) shall require that the system:

270 (i) not impede the safe operation of the motor vehicle;

271 (ii) have features that make circumventing difficult and that do not interfere with the
272 normal use of the motor vehicle;

273 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

274 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
275 concentration exceeds a specified level;

276 (v) work accurately and reliably in an unsupervised environment;

277 (vi) resist tampering and give evidence if tampering is attempted;

278 (vii) operate reliably over the range of motor vehicle environments; and

279 (viii) be manufactured by a party who will provide liability insurance.

280 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
281 independent laboratory tests relied upon in certification of ignition interlock systems by other
282 states.

283 (d) A list of certified systems shall be published by the commissioner and the cost of
284 certification shall be borne by the manufacturers or dealers of ignition interlock systems
285 seeking to sell, offer for sale, or lease the systems.

286 (e) (i) In accordance with Section 63J-1-504, the commissioner may establish an
287 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
288 the state for the costs incurred in certifying.

289 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
290 manufacturers on a fair and reasonable basis.

291 (f) The commissioner shall require a provider of an ignition interlock system certified
292 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,
293 Ignition Interlock System Program Act.

294 (9) There shall be no liability on the part of, and no cause of action of any nature shall
295 arise against, the state or its employees in connection with the installation, use, operation,
296 maintenance, or supervision of an interlock ignition system as required under this section.